

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DARYL DEWAYNE CARTER,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-06-1220-M
)	
JOSEPH SCIBANA, Warden,)	
)	
Respondent.)	

ORDER

On December 4, 2006, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this action brought pursuant to 28 U.S.C. § 2241, seeking a writ of habeas corpus. The Magistrate Judge recommended that this action be dismissed without prejudice based upon petitioner's failure to submit his application to proceed *in forma pauperis* and/or pay the \$5 filing fee. Petitioner was advised of his right to object to the Report and Recommendation by December 26, 2006. On December 11, 2006, petitioner filed his objection.

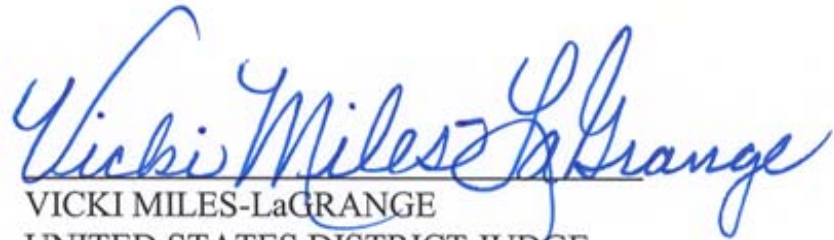
Attached to petitioner's objection is a copy of his federal inmate transaction report, obtained from the staff at FCI El Reno, which shows two \$5 debits from petitioner's trust account, one dated October 24, 2006 and the other dated November 16, 2006, for "Court Fees." While the case file in this matter does not reflect that petitioner has paid the filing fee, the Court finds that based upon the federal inmate transaction report attached to petitioner's objection, petitioner has demonstrated that he has paid or attempted to pay the \$5 filing fee.

Accordingly, the Court:

- (1) DECLINES TO ADOPT the Report and Recommendation issued by the Magistrate Judge on December 4, 2006, and

(2) RECOMMITS this matter to the Magistrate Judge for further proceedings.

IT IS SO ORDERED this 29th day of January, 2007.


VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE